

## Withholding on Net Distributive Share Income

Amendments to administrative regulation [103 KAR 18:070](#), effective November 25, 2003, included a new requirement for a pass through entity to withhold income tax at a rate of 6% on the net distributive share income of each nonresident individual partner, shareholder or member. The requirement to withhold is effective for taxable years ending on or after December 31, 2003.

The purpose for the administrative regulation is to ensure that the correct amount of tax is paid to the Commonwealth. Even before the administrative regulation was promulgated, the Department of Revenue began publication efforts which included addressing this topic during the fall seminars, an article in January 2004 edition of *Kentucky Tax Alert*, and a mailing to certain partnerships. However, because the administrative regulation was not promulgated until late in 2003, notification to all impacted taxpayers could not be performed.

Every pass through entity is encouraged to follow the withholding requirement as promulgated for the 2003 filing period. In doing so, the following benefits will accrue:

- The pass through entity's nonresident members will receive a benefit since they will not be required to individually file;
- The pass through entity will become familiar with this process during the transition period;
- The pass through entity will assist the Department of Revenue implement process improvements for future filing periods.

The following exceptions have been made for the 2003 transition year and withholding is not required, for:

- an entity that was dissolved during 2003; or
- an entity's nonresident members that have made estimated payments for 2003.

In addition, for the pass through entity that is unable to immediately comply with [103 KAR 18:070](#), the following compliance strategy will be implemented for the 2003 transition year.

- If the tax has not been paid through either withholding by the entity or by the individual on the individual's return, compliance efforts will be directed toward only the individual during the transition year.
- Penalties for failure to withhold will not be imposed on the entity, if the entity cooperates with the Department and has completed all other filing requirements timely.

The compliance process for the 2004 return will be in accordance with [103 KAR 18:070](#).

If you need additional information on this topic, please contact Taxpayer Assistance at (502) 564-4581.